

Applicant: ISHIZAKA *et al.*  
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### **REMARKS**

By this response, no claims have been amended, cancelled or newly added. Therefore, claims 1-26 remain pending, of which claim 17-26 are withdrawn from consideration due to an election to a restriction requirement. In view of the following comments, allowance of all the claims pending in the application is respectfully requested.

### **INFORMATION DISCLOSURE STATEMENT**

Applicants thank the Examiner for considering the references cited in the Information Disclosure Statement filed on June 28, 2007, as evidenced by the signed and initialed copy of the PTO-1449 Form returned with the Office Action.

An Information Disclosure Statement was filed by Applicants on July 30, 2007. To date, however, Applicants have yet to receive a copy of the Form PTO-1449 (that accompanied this submission) signed and initialed by the Examiner indicating that cited references were considered. Accordingly, Applicants respectfully request that the Examiner provide a signed and initialed copy of the Form PTO-1449 for this submission with the next Office Action.

### **REJECTIONS UNDER 35 U.S.C. §102**

Claims 1-16 remain rejected under 35 U.S.C. §102(e) as allegedly being clearly anticipated by WO 2004/020692 A1 to Kojima *et al.* ("Kojima I"). Applicants respectfully traverse this rejection for *at least* the reason that Kojima I is not available as a prior art reference under 35 U.S.C. §102(e).

Again, Applicants remind the Examiner that 35 U.S.C. 102 states:

A person shall be entitled to a patent unless-(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty *in the English language*. (emphasis added).

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Clearly, WO 2004/020692 A1 is not published in English, but in Japanese and thus is disqualified as prior art under this section. Moreover, the Examiner is request to review MPEP §706.02(f)(1) and in particular Example 5 therein explaining the application of §102(e) in a fact circumstance similar to this case. In particular, this section states

**All references, whether the WIPO publication, the U.S. patent application publication or the U.S. patent, of an international application (IA) that was filed on or after November 29, 2000 but was not published in English under PCT Article 21(2) have no 35 U.S.C. 102 (e) prior art date at all. According to 35 U.S.C. 102 (e), no benefit of the international filing date (nor any U.S. filing dates prior to the IA) is given for 35 U.S.C. 102(e) prior art purposes if the IA was published under PCT Article 21(2) in a language other than English, regardless of whether the international application entered the national stage. Such references may be applied under 35 U.S.C. 102 (a) or (b) as of their publication dates, but never under 35 U.S.C. 102(e). (emphasis added)**

Therefore, the PCT patent application publication WO2004/020692 of Kojima I may not be used as prior art under 35 U.S.C. §102(e), since it has no §102(e) date at all.

The Examiner alleges that since the international application has an English abstract, then the international application is available as prior art under 35 U.S.C. §102(e). [Final Action, page 3]. Applicants strenuously disagree. As discussed above, the question is not whether an English abstract can be found for an international application, but whether the **International Application was published in English.** Again, Kojima I (WO2004/020692) was published in Japanese.

Claims 1-16 were rejected under 35 U.S.C. §102(e) as allegedly being clearly anticipated by U.S. Patent Application Publication No. 2005/0235918 A1 to Kojima *et al.* ("Kojima II"). Applicants respectfully traverse this rejection for *at least* the reason that Kojima II is not available as a prior art reference under 35 U.S.C. §102(e).

As discussed above, all references, whether the WIPO publication, the U.S. patent application publication or the U.S. patent, of an international application (IA) that was filed on or after November 29, 2000 but was not published in English under PCT Article 21(2) have no 35 U.S.C. 102 (e) prior art date at all. *See*, MPEP §706.02(f)(1). In this case, Kojima II is a published U.S. application based on an international application, namely

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PCT/JP03/15506, with an international filing date of August 20, 2003. The WIPO publication of this international application, namely WO2004/020692, was published in Japanese. Therefore, Kojima II (US 2005/0235918 A1) does not have a §102(e) date.

Thus, Applicants request that the rejection under 35 U.S.C. §102(e) be withdrawn and the claims be allowed.

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**CONCLUSION**

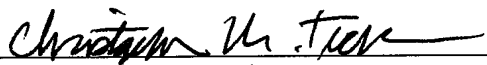
Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Date: December 20, 2007

Respectfully submitted,

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